

~~3024~~

THE
T R Y A L

(A T L A R G E)

O F

John Stevenson,

(Late of *Bickerton*, in the County of *Chester*, Cheesefactor.)

Who was tryed, at *CHESTER-ASSIZES*,

Upon *Friday*, the 27th Day of *April*, 1759.

B E F O R E

Mr. Justice *Swinnerton*,

A N D

Mr. Justice *White*.

Upon an INDICTMENT, for the MURDER
of Mr. *FRANCIS ELCOCK*,

Late of *Nantwich*, in the said County, Attorney
at Law.

With the Arguments of the COUNSEL on Behalf
of the Crown, and for the Prisoner.

The Observations of the JUDGES thereon.

And the Facts specially found by the JURY.

Taken by Mr. *RALPH CARTER*, of
Nantwich, in *Cheshire*.

MIDDLEWICH: Printed by *JAMES SCHOFIELD*.



Chester Assizes.

Friday, the 27th of April, 1759.

The KING }
 against } Upon an Indictment for the Mur-
John Stevenson. } der of Mr. *Francis Elcock.*

About Nine o'Clock in the Morning, the Court being sat, the Prisoner was brought to the Bar.

Counsel for the Crown. Mr. HALL, Attorney- General for <i>Cheshire.</i> Mr FALCONER. Mr. HAYWARD.	{	Counsel for the Prisoner. Mr. TOWNSEND, Re- corder of <i>Chester.</i> Mr. PERRYN. Mr. MADDOCKS.
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Prothonotary to } Prisoner, hold up your Hand.
 the Prisoner. }

Prisoner ar-
 raigned. YOU stand indicted, by the Name
 of *John Stevenson*, late of
Bickerton, in the County of
Chester, Yeoman, for that you, not having the Fear
 of God before your Eyes, but being moved and
 seduced by the Instigation of the Devil on the
 Twenty-first Day of *March*, in the Thirty-second
 Year of the Reign of our Sovereign Lord, *George*
 the Second, now King of *Great Britain*, &c, with
 Force and Arms, at *Bickerton* aforesaid, in the
 County aforesaid, in and upon one *Francis Elcock*,
 in the Peace of God, and our said Lord the King,

A 2
then

then and there being, then and there, feloniously, wilfully, and of your Malice aforethought, did make an Assault; and that you, the said *John Stevenson*, a certain Gun, of the Value of Ten Shillings, then and there, charged with Gun-powder, and one Leaden-Bullet, which Gun, you the said *John Stevenson*, in both your Hands, then and there had, and held, to, against, and upon the said *Francis Elcock*, then and there, feloniously, wilfully, and of your Malice aforethought, did shoot and discharge; and that you, the said *John Stevenson*, with the Leaden-Bullet aforesaid, out of the Gun aforesaid, then and there, by Force of the Gun-powder, shot and sent forth, as aforesaid, the aforesaid *Francis Elcock*, in, and upon the left Side of the Belly, of him the said *Francis Elcock*, then and there, with the Leaden-Bullet aforesaid, out of the Gun aforesaid, by you the said *John Stevenson*, so as aforesaid shot, discharged, and sent forth, feloniously, wilfully, and of your Malice aforethought, did strike, penetrate, and wound, giving to the said *Francis Elcock*, then and there, with the Leaden-Bullet aforesaid, so as aforesaid, shot, discharged, and sent forth out of the Gun aforesaid, by you the said *John Stevenson*, in, and upon the left Side of the Belly, of him, the said *Francis Elcock*, one mortal Wound, of the Depth of five Inches, and of the Breadth of one Inch; of which said mortal Wound, the said *Francis Elcock*, on the aforesaid Twenty-first Day of *March*, in the Year aforesaid, for the Space of ten Hours, at *Bickerton* aforesaid, in the County aforesaid, did languish, and languishing did live, on which said Twenty-first Day of *March*, in the Year aforesaid, the said *Francis Elcock*, at *Bickerton* aforesaid, in the County aforesaid, of the mortal Wound aforesaid,

said, died: And so the Jurors aforesaid, upon their Oath aforesaid, do say, that you the said *John Stevenson*, the said *Francis Elcock*, in Manner and Form aforesaid, feloniously, wilfully, and of your Malice aforethought, did kill and murder, against the Peace of our said Lord the King, his Crown, and Dignity.

Proth. How say you, *John Stevenson*, Are you Guilty of the Murder and Felony, whereof you stand Indicted, or not Guilty?

Prisoner. Not Guilty.

Proth. Culpait. How will you be tryed?

Pris. By God and my Country.

Proth. God send you a good Deliverance.

Pris. Amen. God send me a good Deliverance.

Then the Jurors were called, and sworn.

Names of the Jurors.

WILLIAM BROWN, of <i>Stockport Etchels</i> , Fore- man.	RICHARD JACKSON of <i>Over Bebbington</i> .
JOHN BENNET of <i>Marple</i> .	THOMAS ROBINSON of <i>Newhall</i> .
JOHN HODSON of <i>Raby</i> .	GEORGE WOODHOUSE of <i>Buerton</i> .
HENRY PRICE of <i>Raby</i> .	JOHN CLIFFE of <i>Audlem</i> .
JOHN LEE of <i>Tranmore</i> .	SAMUEL LEA of <i>Bad-</i> <i>diley</i> .
SAMUEL JONES of <i>Over</i> <i>Bebbington</i> .	
JOSEPH WRIGHT of Ditto.	

N. B. The Prisoner challenged *Abraham Darlington* of *Brindley*, as he came to be sworn; but no Cause was assign'd for such Challenge.

Mr. Attorney-General challenged *Edward Hamnett* of *Newhall*, as he came to be sworn; as Mr. *Hamnett* owned, he was related to the Prisoner.

Protac-

Prothonotary then read the Indictment.

Mr. Attorney-General, Counsel for the Crown, opened the Case to the following Effect.

Gentlemen of the Jury,

The Prisoner, *John Stevenson*, stands indicted before you, for the Murder of Mr. *Francis Elcock*, late of *Nantwich* in this County, an Attorney at Law; which Crime he (the Prisoner) perpetrated, and committed upon the Twenty first Day of *March* last: And it is now my Duty, as Counsel on behalf of the Crown, to use my Endeavour, for the obtaining that Justice and Restitution, which the Law requires, for Crimes of this horrid Nature. To which End, it may be necessary, that I point out some Facts, and Circumstances, antecedent to the Commission of the Murder, which I doubt not, we shall be able to prove, and hope, you will be satisfied in your Consciences, that the Prisoner did kill and murder Mr. *Elcock*, as laid in the Indictment. and if so, that you will find him, Guilty.

Gentlemen, At the Time this Murder was committed, Mr. *Elcock* was doing a legal, and a commendable Act; He was endeavouring to subdue the Prisoner. and to bring him to a just Sense of, and an Obedience to the Laws, which he had, but a little while before, violated, by an outrageous Contempt of, and Rebellion to those Laws, which have been wisely (and happily for us) made, for the Preservation of the Lives, and Security of the Properties of the Subject. The Prisoner, Gentlemen, has been for many Years a Cheesefactor in this County, but failing in his Credit some Years ago, has, since then, taken Sanctuary in his House at *Bickerton*, and there kept himself confined to prevent the Effect of a civil Process, and to evade the Pay-

Payment of his just Debts. Common Attempts for Justice to the Creditors, were vain; The Sheriff's Officers too well known, and indeed Persons in general (except a few Confidants) too hardly suspected, to gain Admittance: Art and Policy became necessary. The unfortunate young Gentleman, whose Death you are now to inquire into, was employed as an Attorney, for one of the Prisoner's Creditors, to sue out a Writ against him, which he accordingly did, and obtained the Sheriff's Warrant thereon, and delivered it to one of the Officers named therein, with Directions to arrest the Prisoner. But the Officer apprehending, he should be denied Admittance to the Prisoner, had Recourse to a Stratagem, not unlikely to prevail. He wrote a Letter to the Prisoner, signifying, that the Gentleman, who sent it, wanted to buy some young Trees from the Prisoner, and desiring, that the Bearer of the Letter, might be permitted to view the Trees, or to that Purpose. The Officer went to the Prisoner's House, with this Letter, and knocking at the Door, a Person came to the Window, to whom it was delivered, and as soon as the Prisoner had read the Letter, the Officer was admitted to him. After some Discourse relating to the Trees, the Bailiff acquainted the Prisoner *Stevenson*, with the real Errand he came upon, namely, to arrest him; and accordingly the Bailiff did then, and there, actually arrest the Prisoner, by laying his Hand upon him, and telling him, that he had the Sheriff's Warrant against him, which he produced. What was the Prisoner now to do in this Situation? Must he tamely submit to the legal Authority of the Bailiff, and quit his Asylum, till he had given Security, or rendered to the Plaintiff Satisfaction for his Debt? No.—After a short Pause, and taking a turn,

turn, or two, in his House, he suddenly presented a Pistol, at the Breast of the Officer, and swore, if he did not immediately leave the House, he would blow his Brains out, and without waiting for an Answer, actually snapp'd the pistol at him, which miss'd Fire. But he could not rest here; his Temper was too hot, to put up with the Affront, of being lawfully arrested for a just Debt: He snapp'd the Pistol three Times, at the Officer's Breast, which providentially did not go off — It was high Time for the Bailiff now to retire; the Preservation of his Life required it: He had no Chance, unarm'd and alone, to maintain his Arrest, against a loaded Pistol, and there was no Time for Words, to sooth a Man of so desperate and outrageous a Disposition, into a peaceable Compliance, and therefore the Officer thought fit, (and I think very prudently too) to leave his Prisoner. But after his miraculous Escape, he went to Mr. *Elcock*, who was in the Neighbourhood, and told him, that he had arrested the Prisoner, who rescued himself, by snapping a Pistol at him, three different Times, and desired Mr. *Elcock* to get him Assistance for the re-taking the Prisoner; whereupon Mr. *Elcock*, and the Plaintiff in the Action, with one or two other Persons, returned with the Officer, to the Prisoner's House, which they found lock'd; and Mr. *Elcock* going to one of the Doors, demanded Entrance, and desired the Prisoner to yield to the Arrest. But the Prisoner's Repentment could not relish a Capitulation of this Sort; He was determin'd, still to oppose the Authority of the Law, and to refuse any Obedience to it. Resolved upon the Death of some body, or other, no matter whom, he took up a Gun, loaded with Gun-powder and Ball, and discharg'd it, thro' the Door, against which Mr. *Elcock* stood, and unfortunately

fortunately killed him. It seems unnecessary for me, (Gentlemen,) to make any Observations, with respect to the Intention of the Prisoner to commit Murder; His keeping of Fire-Arms, loaded, in his House; his snapping a loaded Pistol, three different Times, at the Bailiff, in the Execution of his Duty, after he had arrested the Prisoner; and his discharging the Gun, whereby the deceas'd was killed, too fatally evince, beyond the least Shadow of Doubt, that the Prisoner did intend and design an unlawful Killing; and altho' the Prisoner might not have seen Mr. *Elcock*, when he discharged the Gun, which killed him, yet his shooting at Random, was an unlawful shooting, for the Purpose, and with an Intent, to kill some Body, then at the Door, and therefore, that shooting at Random, can be no Justification or Excuse to the Prisoner.—We who are of Counsel for the Crown, shall now proceed to examine the Witnesses in support of the Indictment; and doubt not, but we shall be able to make out the Case, as I have stated it; and if so, you will then find the Prisoner, Guilty, that he may receive the Punishment, justly inflicted by Law, upon those, who shall be guilty of the horrid Crime of Murder.

Mr. Falconer, Counsel for the Crown.

Gentlemen, Mr. Attorney has represented the Case so fully, that it is quite unnecessary for me to enlarge upon it, and therefore shall not take up the Time of the Court; but proceed to the Examination of the Witnesses.

Cryer calls *John James*, the Bailiff, who arrested the Prisoner.

John James sworn.

Counsel for the Crown.

B

Question.

Question. Do you know the Prisoner at the Bar?

Answer. Yes.

Q. Did you know the deceased Mr. *Francis Elcock*?

A. Yes.

Q. Were you, at any time, employed to arrest the Prisoner for Debt; and what happened in Consequence of it? Speak up, that the Gentlemen of the Jury may hear you.

A. Yes, I was employed to arrest the Prisoner, for a Debt due to *John Atkin*.

Q. By whom were you so employed?

A. By Mr. *Elcock*, an Attorney.

Q. You mean, I suppose, the deceased Mr. *Elcock*,—him that was shot?

A. Yes.

Q. Go on.

A. Being so employed, to arrest Mr. *Stevenson*, I went to his House, and knocked at the Door. Some Body came to the Window, and asked me, what I wanted? I told the Person who came to the Window, that I had a Letter for the Master of the House, which she took through the Window; and I suppose it was delivered to Mr. *Stevenson*.

Q. Why do you suppose so?

A. Because, in a little Time after, Mr. *Stevenson* opened the Door.

Q. The Prisoner opened the Door, you say?

A. Yes, and he asked me, whether I lived with the Gentleman who sent the Letter, or from whom the Letter came? I told him I did; and Mr. *Stevenson* invited me in.

Q. Well. What happened afterwards?

A. I went into the House, with Mr. *Stevenson*, and we then went together, towards the back Door,
and

and at the back Door, Mr. *Stevenson* stood still, to call his Servant.

Q. Whereabouts at the back Door did the Prisoner stand still, to call his Servant? Was it within-side of the Door, or at the out-side of the Door?

A. He stood still upon a Step, at the back Door, the out-side of the Door; and I was within-side of the Door.—I then took the Warrant I had against Mr. *Stevenson*, out of my Pocket, and I laid my Hand upon his Shoulder, and sayd, Sir, I hope you will excuse me.—

Q. Was the Prisoner then out of the Door?

A. Yes. I sayd, Sir, I hope you will excuse me; For the Letter I gave you, was to decoy you. I am a Bailiff; This is a Warrant against you; and you are my Prisoner in the King's Name.

Q. What did the Prisoner say then?

A. He screek'd out, and sayd, I had used him ill.

Q. What did you do afterwards?

A. Mr. *Stevenson* and I returned into the House, and when we got into the Kitchen, he called to *Betty*, who, I believe was his House-keeper, and sayd to her, We have done ill, in letting this Man into the House; For, he has arrested me.

Q. He told her, you had arrested him, you say?

A. Yes.

Q. Well. What happened then?

A. The Prisoner went then towards the Fire, and turned to the Screen on the right Hand, and stood at the further End of the Screen.

Q. What did he do then?

A. He turned, all of a sudden, upon me, with a Pistol in his Hand, and sayd, he would blow

my Brains out, if I did not get immediately out of the House?

Q. Did he present the Pistol at you?

A. He did.

Q. What did you say then?

A. I told him, that was not the Way to do Business.—Mr. *Stevenson* then snapp'd the Pistol at me, but it miss'd Fire.

Q. Are you sure he snapp'd the Pistol at you?

A. Yes, very sure.

Q. Well, what did you then?

A. I went backwards thro' the Kitchen, and Mr. *Stevenson* followed me; and in a narrow Passage leading from the Kitchen towards the Door, he snapp'd the Pistol at me again; and he snapp'd the Pistol at me a third Time, but I was then out of the House.

Q. When you got out of the House, where did you go then?

A. I went to the next House. I think Mr. *Nevill's*, where Mr. *Elcock* promised to be. Mr. *Elcock* saw me, and met me, and asked me, if I had arrested *Stevenson*: I told Mr. *Elcock*, that I had arrested him, and that he had snapp'd a Pistol at me three different Times, which obliged me to come away.

Q. What did Mr. *Elcock* say to that?

A. Mr. *Elcock* sayd, I had done enough.

Q. How did you proceed afterwards?

A. I told Mr. *Elcock*, if I had a Pistol, I could bring him away; and he say'd, I should not want that.—Then Mr. *Elcock* sent a Man to the Plaintiff, *John Atkin's*, and to bring Arms from his Father's.

Q. Where did *Atkin* live?

A. At *Cholmondley*, not very far from *Bickerton*.

Q. Did the Messenger return with Arms?

A. Yes.

Q. What did you then?

A. After

A. After the Arms and Assistance were brought, We went again to Mr. *Stevenson's* House.

Q. Who went to the Prisoner's House?

A. I went, and the Plaintiff *John Atkin*, and a Servant of his, I think. Four or five Persons I believe, came with me.

Q. Was there another Sheriff's Officer with you?

A. Yes, a Man tolerated by the Sheriff, one *John Jones*.

Q. Did Mr. *Elcock* go to the Prisoner's House with you?

A. Yes.

Q. What happened, when you all returned to the Prisoner's House?

A. As we were all running towards the Prisoner's House, I saw the Prisoner, and another Man out of Doors; I called to Mr. *Stevenson*, and sayd, you may as well stay, for we are coming for you.

Q. Did the Prisoner hear you say this?

A. I believe he did.

Q. Did the Prisoner stay for you?

A. No, He, and the other Man with him, ran into the House.

Q. Well, when you came up to the House; pray, what followed?

A. When we came up to the House, I sayd to Mr. *Elcock*, I know the Way to that Door; Go you to the other.

Q. How many Doors were there to the House?

A. Three.

Q. Did you know all the three Doors?

A. Yes, I knew them all.

Q. You bid Mr. *Elcock* go to one of the Doors, I think, you say?

A. I bid Mr. *Elcock*, and the others, to take Care of two of the Doors, and I would go to the other.

Q. How

Q. How far was the Door, that you sayd you would go to, from the Door, you desired Mr. *Elcock* to take Care of?

A. It was a good Way distant, in going round about.

Q. You sayd, you would go to the third Door, Did you know the Way to it?

A. Yes, very well.

Q. Did Mr. *Elcock* say any thing to the People in the House, when he came up to the Door?

A. I cannot tell, whether he did or not, because I was not present, for I ran to the other Side of the House.

Q. Pray was the Door you went to, locked, or made fast?

A. It was fast.

Q. When you all came up to the Doors, as you have been mentioning, — pray, what followed?

A. In a very little Time, almost immediately after I came up to the Door, I heard a Noise. — I heard a Gun go off.

Q. Which Way did the Noise come? Where did you apprehend, the Gun went off. In what Situation were you from the Noise, or Report of it?

A. The Noise came, as betwixt me and them; betwixt me and the People who came with me.

Q. How far distant might you be from the Door, where the Gun was fired?

A. Nine or ten Yards it might be from Mr. *Elcock*.

Q. When you heard the Noise, and the Gun go off, what did you do then? it must have alarm'd you?

A. When I heard them crying out on the other Side, I went backwards to an Hedge, and looking
over

over it, I saw Mr. *Elcock* held by two Men, sitting on a Block.

Q. You saw Mr. *Elcock* sitting on a Block supported by two Men, How did he look?

A. Very piteously indeed.

Q. Did you hear him say any thing?

A. Yes, I heard him say, Oh! I am shot. I am shot.

Q. Was Mr. *Elcock* at a great Distance from the Gun, at the Time he received the Wound, or was he near it.

A. I cannot tell, whether he was at a great, or a small Distance from it.

Q. What did you do, after you had seen Mr. *Elcock* sitting on the Block?

A. I returned again to my own Door, to prevent the Prisoner's getting out.

Q. Did you see Mr. *Elcock* afterwards?

A. In about ten Minutes afterwards, I saw two Men, carrying him down the Lane.

Q. Were you with Mr. *Elcock*, at the House he was carried to?

A. No.

Q. Did you see him afterwards?

A. No. I did not see him, after the two Men carried him down the Lane.

Q. Have you the Warrant whereby you arrested the Prisoner?

A. I have.

Q. Pray produce it.--Is this the very Warrant, Under the Authority whereof you arrested the Prisoner?

A. It is.

Q. Pray, who delivered to you this Warrant to execute?

A. Mr. *Elcock* himself.

Q. Were there any Holes in the Door that the Ball

Ball came thro' which killed Mr. *Elcock*, besides the Shot-hole?

A. Yes, there were two Holes in the Door, besides the Shot-hole.

Q. Was there ever a Slit in the Door?

A. That I don't know.

Q. Were the two Holes in the Door higher than the Shot-hole, or lower, or how?

A. The two Holes were higher than the Hole which the Ball had made.

Q. Could you see thro' the two Holes; were they large enough to see, and know a Person through?

A. Yes, I could see through them; I did look through, and saw into the Kitchen plainly. I, and several others did so.

Q. Pray, what Business did Mr. *Elcock* go about, when he went with you to the Prisoner's House?

A. To assist me in re-taking Mr. *Stevenson*.

Q. Do you know the Sheriff's Hand-writing?

A. Yes, very well.

Q. Is the Warrant whereby you arrested the Prisoner, all of the Sheriff's Hand-writing?

A. All is of his Hand-writing, except two Names.

Q. Are you positive to the Sheriff's Hand-writing?

A. Yes, to Mr. *Baxter*'s Hand-writing, who acted as Sheriff, and made out the Warrant, and delivered it.

Q. Pray, what are the two Names, that were not written by Mr. *Baxter*?

A. My own Name, and the Name of *John Jones* another Bailiff.

Q. Who wrote your Name, and the Name of *John Jones* in the Warrant?

A. Mr.

A. Mr. *Elcock*.

Q. Are you sure of that?

A. Yes; for I saw him write them.

Q. Are you usually employed as a Bailiff, for the executing of the Sheriff's Warrants?

A. Yes. I get my Bread by it; and am often sent for, fifteen or twenty Miles round the Country.

Q. Was your Name inserted in the Warrant, as the Sheriff's own Bailiff, or as a special Bailiff?

A. I was a special Bailiff, for that time, appointed by the Sheriff.

Q. How do you know that?

A. I have been informed so. I think it is so expressed in the Warrant.

Q. Had you executed any Warrants, from the Sheriff of the County of *Chester*, the Year before?

A. Yes, many; twenty, or more.

Q. Had you executed any Warrants from the present Sheriff;—Under his Authority?

A. Yes. I executed Attachments under that Authority:—Under Mr. *Baxter*. I had four or five Warrants, upon Process out of the Exchequer, at the time I arrested Mr. *Stevenson*, and have executed several Warrants, since Mr. *Harrison* became Sheriff.

Q. How long had Mr. *Harrison* been Sheriff, before you arrested the Prisoner?

A. A Week or a Fortnight, it might be.

Court.—Read the Warrant, whereon the Prisoner was arrested by the Witness.

The Warrant was then read, and it appeared, that the Words "Bailiffs for this time only" after the Names of *John James* and *John Jones*, the special Bailiffs, were written by Mr. *Baxter*. The Warrant was dated the First of *March* last, and there was an Indorsement thereon, Take good Bail

for Eighteen Pounds Eight Shillings and Ten-pence Half-penny, by Affidavit filed. And under-written, *Elcock* by *Lowe*, by the said Sheriff.

Q. Did *John Evans*, the Sheriff's Bailiff named in the Warrant, go with you, when you attempted to re-take the Prisoner?

A. No; he did not.

Q. When did the Plaintiff *John Atkin* come to you, was he with you before, or at the time you attempted to re-take the Prisoner?

A. *John Atkin* came, when Assistance was sent for, but not before. He came with us, when we went to re-take Mr. *Stevenson*.

Cross-Examined.

Counsel for the Prisoner.

Q. I think you say, you took the Warrant out of your Pocket, and put your Hand upon the Prisoner's Shoulder, and arrested him?

A. I did.

Q. Pray, where did you first see that Warrant, whereon you arrested the Prisoner?

A. I saw it first at *Nantwich*:

Q. Who shew'd it you?

A. The deceased, Mr. *Elcock*.

Q. When you first saw the Warrant, was your Name in it?

A. No.

Q. Was the Warrant when you first saw it, under the Seal of the Sheriff?

A. I believe, it was.

Q. Was the Name *John Jones*, (the other special Bailiff) in the Warrant, when you first saw it?

A. I believe, it was not.

Q. Was the Name of *John Evans*, the Sheriff's Officer, in the Warrant then?

A. Yes.

A. Yes, it was.

Q. Who wrote *Evans's* Name in the Warrant?

A. The Sheriff put it in.

Q. Of whose Hand-writing is the Warrant?

A. It is all of Mr. *Baxter's* Writing, except my Name, and the Name of *John Jones*.

Q. Are you sure of that?

A. Yes.

Q. Who is Mr. *Baxter*?

A. Mr. *Baxter* acts for the Under-Sheriff.

Q. Of whose Hand-writing are the Names, *John James*, and *John Jones*, now appearing in the Warrant?

A. My Name, and *John Jones's* were written in the Warrant by Mr. *Elcock*.

Q. Are you sure that the Names *John James*, and *John Jones*, were written in the Warrant by Mr. *Elcock*?

A. I am very sure of it; For I saw him write them.

Q. Were they written by Mr. *Elcock*, after you first saw the Warrant, at *Nantwich*?

A. Yes.

Q. Is the Warrant in the same Situation, in every Part of it, as it was, when you first saw it at *Nantwich*?

A. It is, except the Addition of the Names made since.

Q. Where does Mr. *Baxter* live?

A. In this City. [*Chester*].

Q. Do you know Mr. *Hollins*?

A. Yes.

Q. Who is he?

A. The Under-Sheriff.

Q. Do the Sheriffs always keep their Office in the City?

A. They keep their Office in the City, where they please, to appoint; I believe so.

Q. And is that the Place, where the Sheriff's Warrants are always made out?

A. That is the Place, where they apply for Warrants.

Q. How far does the Under-Sheriff live from this City?

A. Twenty Miles, I believe.

Q. Was Mr. *Elcock* appointed by the Sheriff, to make out Warrants?

A. I don't know, that he was.

Q. Had Mr. *Baxter* Authority, to make out Warrants?

A. I don't know.

Q. You say, the Under Sheriff always keeps an Office in the City of *Chester*?

A. Yes; where the Sheriffs, when they come in, are pleased to fix it.

Q. You say, you went to Mr. *Elcock*, after you had arrested the Prisoner?

A. Mr. *Elcock* met me, as I was going to him.

Q. And you then told Mr. *Elcock*, you were forced to retreat?

A. I told him so, and so it was.

Q. Is it the Practice, for the Names of the Sheriff's own Bailiffs, or those bound to the Sheriff, to be put into Warrants in the Office; and Blanks to be left in the same Warrants, for the Names of other Bailiffs, to be put in by Attorneys, after the Warrants come from the Office?

A. It is the Practice.

Q. Did you give Security to the Sheriff, for being his Bailiff?

A. No, not at that Time.

Q. Where

Q. Where did you stay after you had arrested the Prisoner, till Assistance came to you?

A. I, and Mr. *Elcock* stay'd at a Gentleman's House, the next House to Mr. *Stevenjon's*, Mr. *Robert Nevils* House, till Assistance came.

Q. Who went for the Assistance?

A. *John Jones*, the other Bailiff named with me, I believe.

Q. What Number of People came to your Assistance?

A. I don't well recollect the Number; but I remember the Plaintiff *John Atkin*, and his Servant, (whose Name I know not,) *Richard Bowker*, *John Jones*, and myself made five.

Q. Did you desire Mr. *Elcock* to stay where he was, at Mr. *Nevills* House, and not go to the Prisoner's House?

A. I did not.

Q. Pray had not you an Iron-Crowe with you, when you all went to the Prisoner's House?

A. Yes.

Q. Where had you that Crowe?

A. I told Mr. *Elcock* I wanted a Crowe, and he borrowed one from the Woman of the House, Mrs. *Nevill*.

Q. You say you went to different Doors, when you came to the House; pray, were these Doors on one Side of the House, — at the Corners of the House; or how were they situated?

A. I said, I went to a Door on one Side of the House, and desired Mr. *Elcock* would stay at a Door, on the other Side of the House.

Q. Did you yourself speak to the Prisoner, when you came to the House, and demand Entrance from him?

A. I did not.

Q. Did

Q. Did *John Jones* demand Entrance?

A. I don't know. *John Jones* was not on the same Side of the House with me.

Q. Did you desire Mr. *Elcock*, to demand Entrance, as you were going to the House, or before you came to the House?

A. No. I did not.—But when we were going to Mr. *Stevenſon's*, I ſaw Mr. *Stevenſon* out of Doors, and called to him to ſtay, and told him, we were coming for him.

Q. How far might you be from the Priſoner, at that time?

A. It might be threſcore Yards.

Q. Were Mr. *Elcock* and *John Jones* at one Door of the Houſe?

A. I don't know.

Q. Did you from the other Side of the Houſe, deſire Mr. *Elcock* to demand Entrance?

A. I cou'd not ſee Mr. *Elcock*, from the other Side of the Houſe.

Priſoner. Is the Warrant you have ſhewn to the Court, the ſame Warrant you produced to me?

A. Yes, the very ſame.

Priſoner deſires to ſee the Warrant. He looks at it, and ſays,—It is not the Warrant.

Court to the Priſoner.

Leave the Questions to be ask'd by your Counſel; They know beſt how to act for your Defence. Conſider, you ſtand upon Tryal for your Life. Your Condition is a moſt melancholy one, and very perilous; therefore refer yourſelf to the Judgment of your Counſel, in Matters of ſo great Importance to you.

Wiſneſs. It is the very Warrant upon which I arreſted the Priſoner.

Then the Wiſneſs with-drew.

Cryer

Cryer, Call *John Atkin*.

John Atkin sworn.

Counsel for the Crown.

Q. Do you know the Prisoner at the Bar?

A. Yes, very well.

Q. Did you know Mr. *Francis Elcock* deceased?

A. Yes.

Q. When were you last in Company with the deceased?

A. I was in Company with him, upon the twenty-first Day of *March* last, at the House of *John Stevenson* in *Bickerton*.

Q. Did you go with the deceased, to the Prisoner's House, on that Day?

A. Yes.

Q. What was the Occasion of your going thither with Mr. *Elcock*?

A. *John James* sent for me, to come to assist the Bailiffs.

Q. To do what?

A. To re-take *John Stevenson*.

Q. And did you go accordingly for that Purpose?

A. Yes.

Q. Who went with you?

A. Mr. *Elcock*, and *John James* and *John Jones*. We all went to take the Prisoner by Force, *John James* having sent for me to assist him, after the Prisoner had snapp'd a Pistol at him.—We all went, because *John Stevenson* had drove the Bailiff from the House, by snapping a Pistol at him.

Q. Who told you, that the Prisoner had snapp'd a Pistol at the Bailiff?

A. *John James* the Bailiff told me so.

Q. Did

Q. Did you see the Prisoner in the House, when you came there?

A. I did not.

Q. Did you go with Mr. *Elcock*?

A. Yes.

Q. How far were you from Mr. *Elcock*, when you came to the House?

A. Within three or four Yards of him.

Q. Then you did not see the Prisoner?

A. No.

Q. Did you see any People in the House, when you came there?

A. No, but I imagine People were in the House, when Mr. *Elcock* and I came to it.

Q. Did you hear any People in the House?

A. Yes, We heard People, but saw no Body.

Q. Were the Doors lock'd, or made fast?

A. Yes. The Doors were made.

Q. When you came up to the House, did *John James* give Mr. *Elcock* and you any Directions, about the Business you were to do there?

A. Yes, When we came up to the Door, *John James* ordered Mr. *Elcock* and me to attend that Door.

Q. Which Door was it?

A. It was the back Kitchen Door.

Q. When you came to the Door, did Mr. *Elcock* say any thing to the People in the House?

A. As soon as we came to the Door, Mr. *Elcock* sayd, open the Door,—open the Door, or we'll break it down,—I thought they were making the Door fast.

Q. Was the Door opened?

A. No.

Q. What was done afterwards, when the People within would not open the Door?

A. As

A. As soon as Mr. *Elcock* said so, he bid me strike an Iron-Crowe under the Door, in order to lift it off the Hinges; and I accordingly put the Crowe under the Door.

Q. Was it Mr. *Elcock*, who ordered you to put the Crowe under the Door?

A. Yes.

Q. When you put the Crowe under the Door, pray, what happened?

A. As soon as I had put the Crowe, or Ringer under the Door, Mr. *Elcock* sayd to me, *John*, run to the other Door, for fear *Stevenson* gets out of it; Whereupon, I left the Crowe sticking under the Door upon the Sill, and went away towards the other Door, and had not gone above three or four Yards from the Door, before I heard a Gun go off.

Q. Did you see Mr. *Elcock* when the Gun went off?

A. Yes.

Q. Did he say any thing then?

A. Yes—I heard him say; I am shot, I am shot. And he fell on one Side of his Back down two Steps.—*Richard Bowker* and I took him up;—Then Mr. *Elcock* took up his Shirt, and shewed us the Wound.

Q. Who was this *Bowker*?

A. He was an Assistant who came with me, to re-take *John Stevenson*.

Q. What did you do with Mr. *Elcock*, after you and *Bowker* took him up?

A. He hung about our Shoulders, and we carried him to a Wooden-Block, where he desired to rest.

Q. You say he pulled up his Shirt, and shew'd you his Wound, pray, on what Part of his Body was he wounded?

D

A. He

A. He was wounded on the Side of the Belly, above his Groin.

Q. Were there any Holes in the Door where the Ball came thro', besides that which the Ball made?—Did you see the Hole which the Bullet made?

A. I saw the Hole, which the Bullet came through; and there was also a Slit in the Door, which seemed big enough for a Person to see through. And there were two Holes besides in the Door?

Q. How large were the two Holes that were in the Door, besides that which the Bullet made?

A. One of the Holes was an Inch and half Hole; the other bigger. But the Slit was afterwards lath'd on the Inner-Side of the Door.

Q. Could you have seen the Prisoner through those Holes?

A. No doubt of it, if he had been opposite to me when I looked through; but he was not, and therefore I cou'd not see him.

Q. Were you present when the Prisoner surrendered himself?

A. I was

Q. Had he any Fire-Arms in the House, when he surrendered?

A. He had Fire-Arms at that Time. I fired off one of the Pistols, the Day after the Prisoner killed Mr. *Elcock*.

Q. What Day of the Month was that?

A. The twenty second of *March*. Mr. *Elcock* received his mortal Wound upon the twenty-first, about Three o'Clock.

Q. What other Fire-Arms had the Prisoner, when he surrendered, besides the Pistol you fired?

A. There were two Pistols;—one besides that, which I fired; and a Gun.

Q. Were

Q. Were they loaden?

A. Yes.

Q. How do you know they were loaden?

A. That Pistol which I fired off, was very heavy loaded: The other Pistol was discharged against an Ash-Tree, and I saw the Hole which the Bullet had made in the Tree; and the Gun was fired into the Air.

Q. When the Prisoner surrendred himself, did he acknowledge, that he had Fire-Arms in the Houle?

A. He sayd, he had but one Pistol.—But the Woman in the Houle being asked, whether there were any more Fire-Arms; she told them, there was another Pistol and a Gun.

Q. You say, you discharged one of the Pistols yourself; Did you?

A. I did, and fired it into the Air.

Q. Did you see the Pistol discharged against the Ash-Tree?

A. I did; and look'd at the Hole, which the Ball had made. — The Gun was fired into the Air.

Cross-Examined.

Counsel for the Prisoner.

Q. When you came to re-take the Prisoner with Mr. Elcock, what Orders did *John James* give you?

A. He ordered Mr. Elcock and me to stay at the Door; and he ran to the other.

Q. What Orders had *John Jones* received; Was he to have no Hand in re-taking the Prisoner?

A. *John Jones* was ordered by *John James*, to attend a Woman, *Stevenson's* Houle-keeper, I believe, and not let her come near him.

Q. Was neither *John James*, nor *John Jones*,

with you and Mr. *Elcock* at the Door, where you were stationed, in order to re-take the Prisoner?

A. Neither of them.

Q. Was *John Jones* within Sight of you?

A. I think he was.

Q. Did you all act as Assistants to the Bailiff?

A. Yes;

Q. And by his Orders?

A. Yes.

Then the Witness with-drew.

Cryer, call *William Griffith*.

William Griffith sworn.]

Counsel for the Crown.

Q. Do you know the Prisoner at the Bar?

A. Yes, very well.

Q. Do you remember any thing, about the Prisoner's discharging or firing a Gun at any time? pray, speak up, that the Jury may hear you, and acquaint them, with what you know of the Matter?

A. Yes, Sir, I was in Mr. *Stevenson's* House at *Bickerton*, when Mr. *Elcock* was shot.

Q. What Part of the House were you in, at that Time?

A. I was in the House-Place, and Mr. *Stevenson* was in the back Kitchen.

Q. Was any Body in the House, besides the Prisoner and yourself?

A. Yes. A Woman was in the House.---A Servant-Woman.

Q. Did you see the Prisoner fire the Gun?

A. The Prisoner did fire the Gun, at the back Door, and brought it in afterwards, and took it into the Parlour.

Q. After

Q. After the Gun was fired, did you hear no Noise out of Doors; Was there no Alarm made about it?

A. Yes. The People without shouted, Murder.

Q. From what Place did the Prisoner take the Gun, which he fired?

A. He took it from the Mantle-Piece in the Kitchen.

Q. Was the Prisoner accustomed to keep Fire-Arms in the House with him?

A. I cannot tell.

Q. How long was it after the Gun was fired, that you heard the People shout, Murder?

A. In about a Minute, or two, after the Gun was fired.

Q. I suppose, you were curious enough after the Gun was fired, and you heard the Cry of Murder, to know, Whether any Body was hurt, or not; Were not you?

A. I went to a Window, and look'd out; and saw a Man in blue Cloaths supported, or held up between two Men.

Q. Did you say nothing to the Prisoner, upon this Occasion?

A. Yes; I told Mr. *Stevenson*, that I believed there was never a Man killed, but there was one hurt, and they called him Mr. *Elcock*.

Q. And pray, when you told the Prisoner, there was never a Man killed, but a Man hurt, and his Name was Mr. *Elcock*; what did he say to you?

A. He sayd, I don't know what Business a Man of his Coat, had among such Men as those. I am glad of it.

Q. What do you apprehend he meant, by the Words "A Man of his Coat"?

A. I don't know.

Counsel for the Prisoner.

You will please to observe, The Witness told the Prisoner, there was a Man hurt, but no Body killed; and that was immediately before the Prisoner sayd, he was glad of it. Glad, that no Body was killed.

Then the Witness with-drew.

Cryer, call Mr. Cooper.

Mr. Cooper sworn.

Counsel for the Crown.

Q. I think you are a Surgeon?

A. Yes, Sir.

Q. Where do you live?

A. At *Nantwich*.

Q. Did you know the deceased, Mr. *Francis Elcock*?

A. Yes, very well.

Q. Were you sent for at any time, and when, to attend Mr. *Elcock*, upon Account of his having received a Wound, by the firing of a Gun, or otherwise?—Pray acquaint the Court, and Jury, with what you know of this Matter?

A. Upon *Wednesday* the twenty-first Day of *March* last, a Messenger came to me, about Three o'Clock in the Afternoon, desiring me to go to *Bickerton*, to Mr. *Francis Elcock*, who, the Messenger told me, was shot.—I went accordingly with the Man, and got to *Bickerton* about Five o'Clock in the Evening. When I came there, I found, that Mr. *Rowe*, a Surgeon from *Malpas*, had been sent for likewise, and had been there, for some time before. Mr. *Rowe* and I went up Stairs together, to the Room, where Mr. *Elcock* was, and We found him ill in Bed. Almost so soon as he
saw

saw me, he pulled up his Shirt, and shewed me where the Ball was lodged. and seemed impatient to have it taken out: Upon seeing the Wound, I took the Ball, between my Finger and Thumb, and perceived, I cou'd easily dislodge it. I then examin'd the Wound, where the Ball had entred, and found it cut about two Inches from the Hip on the left Side of his Belly: it pass'd thro' his Belly, by his Bowels no doubt, and lodged five or six Inches below the right Hip, almost through the Skin. As soon as I saw this, I took Mr. *Rowe* into another Room, to consult, what was fittest to be done; and I told him, it was my Opinion, that Mr. *Elcock* was a dying Man, and that I did not know, whether it would be of any Use, to take the Ball away, altho' it could be so easily effected — But, considering, that it wou'd give him some Satisfaction, and perhaps Ease too, by taking the Ball from the Place where it did lie, Mr. *Rowe* and I went into the Room again, and I took out the Ball. — After I had taken the Ball out, and dressed the Wound, and put a Bandage about it, I asked Mr. *Elcock*, how he did? He sayd, he was easier. Doctor *Hayes* came in afterwards, and when I had told him, the Nature of the Wound, he look'd upon the Case to be extremely dangerous. The Doctor stayd with him two or three Hours and then went away; but Mr. *Elcock* desired me and Mrs. *Nevill* to sit with him, which we did, and his Father did so too, till ten Minutes past Three the next Morning, and he then expired. — The Witness produces the Ball.

Q. Do you believe, that the Wound which Mr. *Elcock* received, was the Occasion of his Death?

A. I firmly believe, that the Wound which he received was the Occasion of his Death.

Q. Did

Q. Did Mr. *Elcock* say any thing to you in his Agonies, upon the melancholy Occasion, and what?

A. Mr. *Elcock* told me, that he was shot, as he was stooping down, with a Crowe in his Hand, striving to open the Prisoner's Door?

Q. Did he tell you, from what Part of the House he was shot?

A. He sayd, he received the Wound at the Door of the Prisoner's House?

Q. Pray, how came the Ball to be made so flat: in that uncommon Form?

A. I believe its going through the Door, was the Occasion of its being in that Form.

Then the Witness with-drew.

Cryer, call Mr. *Baxter*.

Mr. *Robert Baxter* sworn.

Counsel for the Crown.

Q. Pray, Mr. *Baxter*, Are you concern'd in any, and what Manner, for Mr. *Harrison*, the present Sheriff of the County of *Chester*?

A. Yes, Sir, I am concerned for the Sheriff, and keep his Office.

Q. Do you make out Warrants for the Sheriff?

A. I do.

Q. Did you receive at any time, and when, a Writ against the Prisoner, at the Suit of *John Atkin*?

A. I received a Writ against him upon the First of *March* last. [which he produces.]

Q. Look upon that Warrant.—Did you make out that Warrant upon the Writ, in order to arrest the Prisoner?

A. I did.

Q. And

Q. And are you sure, that is the same Warrant you did make out?

A. Yes; I am sure it is.

The Writ was read, and upon the Back of it, was written, "Take Bail for Eighteen Pounds Eight Shillings and Ten-pence Half-penny, by Affidavit filed,"—And another Indorsement, viz.—"I promise to indemnify the Sheriff, in the Execution of the Writ, as to the special Bailiffs. *John Atkin.*"

Q. Is it usual for the Sheriff to appoint a Gentleman in this Town to execute the Office, and to act for him?

A. It is usual.—I have been several Times appointed myself.

Q. Do you receive all the Writs that are sued out directed to the Sheriff of this County?

A. I do.

Q. And do you make out the Warrants upon such Writs?

A. I do.

Q. And return the Writs?

A. Yes.

Q. Do you execute all other Acts, that the Sheriff would do, if he resided here himself?

A. Yes. Except attending the Assizes and Sessions.

Q. And has this been the constant Practice in this County?

A. Yes, during all my Time.

Q. Has it been usual, when Plaintiffs would have special Bailiffs appointed, to leave Blanks in the Warrants for their Names to be inserted?

A. Yes, upon the Sheriff being indemnified.

Q. Have you done this yourself?

A. Yes.

Q. Have you known others to do it?

E

A. Yes,

A. Yes, several others to my Knowledge.

Q. Did you ever know it to be refused?

A. No, never, upon the Sheriff being indemnified, and the Attorney is known to be a fair Practicer. — I have known it refused, where the Practicer was not liked, or where the Sheriff run any Ritque or Hazard, and the Indemnity was not approved; But when the Attorney, or Practicer, and the Indemnity are liked, it is usually done.

Q. Pray, what is the Nature of the Indemnity given to the Sheriff upon this Occasion?

A. It is, that he should not suffer by Escapes or Rescues.

Q. And has this been the constant Practice used by the Persons, who have acted in the Sheriff's Office, in the Capacity you now act?

A. It has been so, all the time I have known the Office.

Q. How long, pray, is that?

A. Seven or eight and twenty Years.

Q. To leave Blanks in the Warrants, for the Names of the special Bailiffs to be inserted?

A. Yes.

Q. Pray, Whether is such Practice convenient to the Plaintiffs and Suitors in the Court, or inconvenient to them?

A. It is look'd upon to be very convenient for the Plaintiffs.

Q. Do you think so yourself?

A. I look upon it in that Light.

Q. Had Mr. *Lowe*, or Mr. *Elcock*, or both of them a Right, to insert the Names of the special Bailiffs, in the Blank left in the Warrant, whereon the Prisoner was arrested?

A. I apprehend, either Mr. *Lowe*, or Mr. *Elcock* had a Right to do so?

Q. Is

Q. Is it usual for Attornies in the Country, to send their Directions to their Agents in *Chester* to take out Writs?

A. Yes.

Q. And is the Agent's Name generally put to the Writ, or the Name of the Attorney in the Country only?

A. The Agent's Name is generally added to the Name of the Country Attorney, in the Writ, since the late Act of Parliament for that Purpose; but before that, the Name of the Attorney was only put to the Writ.

Q. And you say that either Mr. *Lowe*, or Mr. *Elcock*, had a Right to insert the Names of the special Bailiffs?

A. Yes. I apprehend so.

Cross-Examined.

Counsel for the Prisoner.

Q. Do not the Attornies, and other Persons, usually send the Names of the special Bailiffs, to be intorted in the Warrants, by the Sheriff, or by those who act for him?

A. Sometimes People do send the Names of the special Bailiffs, to be intorted.

Q. Has it not been the most usual Way, in your Time, to do so?

A. It was when I first knew the Office the most usual Way, in 1732 and 1733.—But Warrants went out with Blanks then.

Q. Did *John Evans*, the Bailiff named in the Warrant, indemnify the Sheriff?

A. He has given Security to the Sheriff, I believe.—But the Indemnity was for the special Bailiffs.

Q. In the Year 1732, or 1733, Were blank Warrants sent out, and not the Names of the special Bailiffs inserted?

A. When I was concerned for Mr. *Page*, who was Sheriff in 1732 or 1733, several blank Warrants were sent out, and not the special Bailiffs inserted.

Q. How many Warrants were sent out, with Blanks for the Names of the special Bailiffs, in Mr. *Page's* Time?

A. I cannot tell.

Q. Were not Warrants oftner delivered, with the Names of the special Bailiffs inserted in the Office, before they were sent out, than Warrants with Blanks, for the Names of the special Bailiffs, to be afterwards inserted by the Attornies?

A. I believe, Warrants were oftner sent out, with the Names of the special Bailiffs inserted, than with Blanks.

Q. Is that the Warrant, you made out on the Writ the First of *March* against the Prisoner?

A. Looks at the Warrant. It is the same Warrant.

Q. Is it in the same Situation it was, when you delivered it out of your Hands?

A. No.

Q. How has it been altered? how does it differ?

A. The Names, *John James*, and *John Jones*, have been since inserted.

Q. Pray, was the Seal to the Warrant before you delivered it out of your Hands?

A. Yes.

Q. Are you sure of that?

A. Yes, for I put the Seal to it myself.

Court.

Court. Do you remember, that any Arrest was ever set aside, or disputed, on Account of a Blank Warrant having been sent out?

A. No, never.

Counsel for the Prisoner.

Q. Through all the Course of your Practice, has it not been most usual, to make out Warrants, after you received the Names of the special Bailiffs, than without them;—than making out blank Warrants?

A. Yes, it has been most usual, I think.

Q. When the Names of the special Bailiffs are sent, Do you always insert them in the Warrants?

A. Yes. I do.

Q. Pray, how is the Under-Sheriff of *Cheshire* appointed?

A. He is appointed by the Sheriff, by Deed.

Q. Have you any written Authority from the Sheriff?

A. No further, than by Letters sent me sometimes, about the Business of the Office.

Q. How were you appointed?

A. The Night before the Sheriff was sworn, I supped with him, and it was agreed, I shou'd act for him.

Q. Who were present, when you were appointed, to act for the Sheriff?

A. The Sheriff, and Under-Sheriff, were both present, and appointed me.

Q. Were you appointed by any Instrument in Writing, or not?

A. I was not.

Q. Is it usual for the Sheriff and Under-Sheriff, both to appoint an Agent, to act for the Sheriff?

A. I believe, the usual Way is by the Under-Sheriff only.

Q. Is

Q. Is there no other Method of appointing a Person, to act for the Sheriff, but by Parol?

A. I don't know of any other Way.

Q. Is the Seal to the Writ, the Seal of Office?

A. It is.

Q. Have the Persons concern'd for the Sheriff of this County, usually that Sort of Seal?

A. Yes.

Q. Where had you this Seal?

A. I had this from Mr. Griffith, having lost my own.

Then the Witness with-drew.

Mr. Gastrell, Clerk to Mr. Lowe, an Attorney in Chester, was then called, to prove that *John Atkin* signed the Indemnity given to the Sheriff, when the blank Warrant against the Prisoner was sent out. But the Court thought it unnecessary to examine him.

Mr. Cross, an Attorney in Chester, sworn.

Counsel for the Crown.

Q. Are you acquainted with the Method of suing out Process, in the Court of Session for this County?

A. Yes.

Q. Is it usual, to send out Warrants, from the Sheriff's Office, with Blanks for the Names of the special Bailiffs to be inserted.

A. When special Bailiffs are desired, Warrants frequently issue with Blanks, for their Names to be inserted.

Q. Do you know this to be frequently done?

A. Yes.

Coun-

Counsel for the Prisoner.

Q. But is it not more usual, for the Names of the special Bailiffs to be put into the Warrants, in the Office, before they are sent out, than, for Warrants to issue with Blanks, for Bailiffs to be inserted afterwards?

A. Sometimes the Names of the special Bailiffs are inserted in the Office.

Q. I say, is it not oftner done? more frequently?

A. I don't know but it may.

Counsel for the Crown.

Q. Don't you think it prudent, sometimes not to send the Names of the special Bailiffs to the Office?—to conceal the Names till they are inserted by the Attorney?

A. I do.

Mr. *Fluit*, an Attorney in *Chester*, sworn.

Counsel for the Crown.

Q. Did your Father ever act as Agent for the Sheriff of this County?

A. He did.

Q. Was it customary for your Father, to send out Warrants with Blanks, for the Names of the special Bailiffs to be inserted afterwards?

A. He did leave Blanks often in the Warrants.

Q. I suppose you understood, that your Father had Authority so to do?

A. I always understood, that he had Authority to do it.

Counsel for the Prisoner.

Q. But did your Father never refuse, to send out blank Warrants, to your Knowledge?

A. Yes,

A. Yes; he sometimes did, when he suspected the Attorney; but never, when he knew the Attorney to be a fair Practicer.

Here ends the Evidence on behalf of the Crown.

Court to the Prisoner.—Have you any Witnesses to examine?—This is the Time for making your Defence.

The Prisoner having called no Witnesses, nor sayd any thing in his Defence.

MR. RECORDER TOWNSEND, of Counsel for the Prisoner, spoke to the following Effect.

The Prisoner, I believe, has no Witnesses to call to his Defence, except one Woman, and, I don't know yet, that it will be necessary to examine her.

The Occasion my Lord, of my appearing this Day, as Counsel for the Prisoner at the Bar, is on all Sides, a very lamentable Occasion indeed, which must unavoidably affect every Body, who has the least Degree of Tenderness and Humanity; and glad I should have been, if the Prisoner had submitted to the Arrest, how illegal soever, rather, than to have taken the desperate Methods he did, for delivering himself from it: and I cou'd wish, that it was now in his Power, to satisfy the Gentlemen of the Jury, upon the present Tryal for his Life, that he did not discharge the Gun, nor kill the unfortunate young Gentleman Mr. *Elcock*, rather, than to have recourse, to the Sanction of the Law, for a Justification of his Rashness: Yet, as the unhappy Condition of the Prisoner at the Bar, does require all the Aid, and Assistance, which the Law can allow him, for the saving of his Life, I hope, I shall incur to myself, no Imputation, in the Discharge

charge of my Duty, by endeavouring to satisfy your Lordship, under the Authority of the Law, that, although the Prisoner did discharge the Gun, whereby Mr. *Elcock* was killed, yet, that he is, by Law, acquitted from the Crime of Murder; and that, under the Circumstances of his Case, such Killing will not amount to more, than Manslaughter. — My Lord, I humbly conceive, that no Warrant or Process from the Sheriff, can be executed by any Persons, but by those, whom the Sheriff appoints to execute them. The High-Sheriff undoubtedly, may appoint his Deputy, to act for him; and the Appointment of the Under-Sheriff of this County was by Deed, and not a Parol-Appointment. Under that Appointment the Under-Sheriff is armed with a Power, of doing the lawful Duty, and Business of the Sheriff himself — But, my Lord, in the present Case, Mr. *Baxter*, who made out the Warrant, against the Prisoner, was a Person, acting under the Under-Sheriff; He was not appointed by any Deed, or Instrument in Writing; but he was appointed by Parol, by Word of Mouth only: And Mr. *Baxter*, as Assistant to the Under-Sheriff, under this defective Appointment, made out a Warrant, against the Prisoner, and sent it out, after it was sealed, with a Blank left therein, for the Names of the special Bailiffs, to be inserted in it. — The Names *John James*, and *John Jones*, were not in the Warrant, when Mr. *Baxter* delivered it out, under the Seal. It was taken twenty Miles, to *Nantwich*, to have the Names afterwards inserted in it. This is proved by *John James* himself, who swears, that he saw Mr. *Elcock* write his Name, and the Name of *John Jones*, in the Warrant at *Nantwich*. — My Lord,

I humbly apprehend, that no Warrant whatsoever from the Sheriff, can or ought to receive the least Addition, Diminution, or Alteration, after it passes the Seal of Office; and that if any Person, in the Execution of a Warrant, which shall receive any Addition, or Diminution, or any Alteration whatsoever, after it has passed the Seal, shall be killed, such Killing cannot be Murder.— And if a Person not lawfully authorized, shall attempt to deprive a Man of his Liberty, although by a legal Warrant, and is killed in such Attempt, the Killing in that Case also, is not Murder. My Lord, I have the Authority of as great a Man, as eminent a Lawyer, as ever lived, which I humbly apprehend, is directly in Point, *Hale's P. C.* 457, where my Lord *Hale* lays down the Law, in these Words.

“ If a Sheriff's Bailiff comes to execute a Process,
 “ but has not a legal Authority, as if the Name of
 “ the Bailiff, Plaintiff, or Defendant, be interlined,
 “ or inserted, after the Sealing thereof, by the
 “ Bailiff himself, or any other, if such Bailiff be
 “ killed, it is but Manslaughter, and not Murder.”

And, my Lord, notwithstanding the Evidence given by Mr. *Baxter*, and Mr. *Fluit*, that Warrants have been generally sent out with Blanks, for the Names of the special Officers, to be afterwards inserted, I humbly contend, that the Warrant, whereon the Prisoner was arrested by *James*, the special Officer, at the Suit of *John Atkin*, was an illegal Warrant, inasmuch as the Names of the Bailiffs were added to, or inserted in the Warrant, after it had passed the Seal; and it was at the Peril of the Party, executing that Warrant, whether Death, or any other Mischief ensued upon it: And, notwithstanding, Warrants have sometimes been sent out by the
 Per-

Person acting for the Sheriff, with Blanks left in them, for inserting the Names of the Bailiffs, after the Warrants have been sealed, yet that Usage, or Practice cannot be considered, to extend to overrule, or set aside, the known Law, set down by my Lord *Hale*. — My Lord, This is a Point of Law, which I hope, your Lordship will look upon, to be worthy of Consideration, and not be left to the Determination of the Jury. — It has likewise appeared in Evidence, that when *John Atkin* and *John Jones* came to the Assistance of *John James* the Bailiff, All that *James* ordered Mr. *Elcock* to do, was to stay at the Door: He gave him no Authority, nor Orders to break the Prisoner's House; All he was to do, was to guard the Door. — But, it appears in Evidence, that Mr. *Elcock*, in a very extraordinary Degree, exceeded the Limits of the Orders, which the Bailiff had given him; For, a Crowe or Ringer was thrust under the Door, (that very Door which he was ordered to stay at only,) possing it open; and Mr. *Elcock* himself, in his Agonies, declared to Mr. *Cooper* the Surgeon, who attended him, that he was striving, to break open the Door, with the Crowe, when the Gun was fired: And therefore I submit it to your Lordship, Whether Mr. *Elcock* did not exceed the Orders, and Authority given him by *James*, supposing, that *James* had, in himself, any Power at all, (which I humbly conceive he had not,) and cou'd have transferred any Power or Authority to Mr. *Elcock*. These are two Questions, my Lord, which appear to me to be in Favour of the Prisoner, and to deserve Consideration; And if the Court shall be of the same Opinion, I humbly hope, you will not suffer a general Verdict to go against the Prisoner,

but reserve those Points, for the Consideration of the Court.

Then Mr. *Perryn*, also of Counsel for the Prisoner, spoke to the following Effect.

The only Question, my Lord, is, Whether the Killing Mr. *Elcock*, in Manner given in Evidence, ought to be considered, as Murder, or Manslaughter. It appears clearly, that the Names of the two Bailiffs, were not inserted in the Warrant, when it issued under the Seal of the Sheriff, and therefore it was an illegal Warrant, under which, *James* cou'd not derive any lawful Authority, to arrest the Prisoner; For, according to Lord *Hale*, the Warrant should have been a full and compleat Warrant, when it passed the Seal, and ought not to have been a Blank Warrant, *H. P. C. 457.* [quoted by MR. RECORDER] And the present Fact proved by *James*, and Mr. *Easter*, that the two special Bailiffs were inserted after the Warrant was sealed, comes under the Words of this great Authority. My Lord, you will observe, that the Sheriff's own Bailiff, named in the Warrant, was not called upon, nor employed to execute it, nor did he attend the Execution of it: But, the Arresting of the Prisoner, was intirely left to the special Bailiffs, who, I humbly apprehend, had not the least Power or Authority to execute it.—My Lord, I shall quote other Authorities, which I humbly apprehend, will make in Favour of the Prisoner, and those are. *Hawkin's P. C. 86.—Cro. C. 372.—1 Jones 346. 372. 1 Leo. 91. 12 Coke 49.* And I mention those Authorities, to shew, that if a Warrant be in the least defective, the Arrest cannot be justified.—

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With regard to the Power derived to Mr. *Elcock*, from *James*, the Bailiff, I hope it will appear to your Lordship's Satisfaction, that *James* had not the least Power, or Authority whatsoever in himself, and therefore cou'd not transfer any to Mr. *Elcock*. But supposing, the Bailiff had any Power to call Assistance, and to have given his Orders to Mr. *Elcock*, yet, Mr. *Elcock* should have strictly observed the Orders, which had been given to him—he should have pursued the Directions, namely, to stay at the Door, and not to have exceeded the Limits of his Authority, in the Manner he did, in attempting to break down that Door, which he was, only, directed to guard, or stay at, and had not any Orders or Authority to break down. There are other Authorities, which I humbly conceive will be of Use to the Prisoner, when they come to be considered. 2 *Lev.* 144. 2d *Inst.* 105, 143. and 3d *Lev.* 146. They treat of Arrests, and the Authority of the Bailiffs, and their Assistants. No Request was made from the Bailiff, to Mr. *Elcock*, to break down the Door, which shou'd have been previously done, before Mr. *Elcock* cou'd have had the least Colour, or Pretence, for attempting to break open the Door of the Prisoner's House. *Bretton* and *Cole. Salk.* 409.—1 *Ray.* 305.—Upon the whole, I hope, your Lordship will think that thote Points deserve the Consideration of the Court, and that they ought not to be left to the Determination of the Jury.

Then Mr. *Maddocks*, likewise of Counsel for the Prisoner, spoke to the following Effect.

I am also of Counsel with Mr. RECORDER *Townsend*, and Mr. *Perryn*, for the unhappy Prisoner

at the Bar, and hope your Lordship will be of Opinion, that a good deal of Nicety attends this Case, not proper for a Jury to determine upon; and that several Points of Law have arisen, well worth the Consideration of the Court. The Law, my Lord, arises out of the Fact. This appears to be an Indictment, against the Prisoner, for the Murder of Mr. *Francis Elcock*, who, when he was murdered, was assisting to re-take a Person, making his Escape from an Arrest: And I shall consider the Case according to its Nature. First, if Mr. *Elcock* was a Trespasser, Then the Prisoner's killing him, could be only Manslaughter, not Murder.—Secondly, Whether upon the Writ, the special Bailiff and Mr. *Elcock* derived an Authority, for what they did. And here I shall mention one Authority *Hawkins's P. C. 86.* which shews, (altho' the Case is not exactly the same, with this,) that the General Rule is, if a Party, under Colour of Authority, not having legal Authority, shall attempt to take away a Man's Liberty, and is killed in the Attempt, the Killing of that Party, is not Murder, but Manslaughter: And whether Mr. *Elcock* was a Trespasser or not, will depend upon the Authority he derived under the Writ.—The Writ itself does not appear to be void, and therefore I won't speak upon it, but shall confine myself to the Warrant made out, for arresting the Prisoner, in Obedience to the Writ. As to the Facts given in Evidence, it appears, that the Warrant was issued by Mr. *Baxter*; that Mr. *Baxter* then acted for the Sheriff, as an Assistant, by Parol-Agreement, and delivered the Warrant, under the Seal of the Sheriff's Office, That the Name of *John Evans* a Bailiff, was then in it, and none others, and that it was carried so to *Nantwich*; That Mr. *Elcock* was at *Nantwich*,
and

and there inserted the Names of *John James* and *John Jones*. Now the General Question is, whether this Warrant was good in Point of Law? In the first Place, the Person granting the Warrant, must have lawful Authority for so doing. Mr. *Baxter*, on his Examination, has sayd, That the Night before the Sheriff was sworn, he supp'd with him, and it was then agreed, he should act for the Sheriff. That the Sheriff and Under-Sheriff were both present, and appointed him, but that it was by Word of Mouth only. And it fully appears that Mr. *Baxter* had no Authority, from the High-Sheriff, in Writing — An Under-Sheriff, my Lord, may be admitted into his Office, by Parol; He is to execute the whole Office: But Mr. *Baxter* is only to execute a particular Part of it. The Under-Sheriff was appointed by Deed; But Mr. *Baxter*, who did some things for the Sheriff, but did not execute others, such as attending the Assizes and Sessions, was appointed by Parol. I apprehend, if a Person is to act for the Sheriff, under a limited Authority, that Authority ought to be in Writing, and where the Sheriff delegates a Part only, of his Authority to another, it should be by Writing; and therefore, I humbly conceive, that the Appointment of Mr. *Baxter*, to act for the Sheriff, was not a good Appointment, and that his Authority to make out the Warrant, upon the Writ, for arresting the Prisoner, was a very defective Authority. — Now, whether the Warrant was a legal Warrant, or not, is in the next Place, to be considered. And that will depend upon a Variety of Circumstances. Upon the Nature of the Instrument itself, and Matters attending it. A Warrant is always under Seal, and therefore is a Deed, — I say, this War-
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rant was a Deed under Seal: and nothing binds the Parties, but what is contained in a Deed, when executed: No Interlineation, or Addition afterwards made can affect the Parties who had executed it, unless the Deed be re-executed: and there has been no Evidence given, that this Deed, this Warrant was re-executed. Then, if this be the Case in General. At the time the Sheriff sealed this Warrant, the Names of the two Bailiffs, *James* and *Jones*, were not in it. No Authority was given to any Person, but to *Evans* the Bailiff, who was then named in the Warrant. — Cites *Hale's P. C.* 457. [quoted before by the other Counsel.] Every lota of this Case is paralel; and is agreeable to Law, and Common-Sense. How can this Case be distinguished from the General Law? Can it by Custom? by *Lex Loci*? it may. What is then incumbent to be done, to establish this Distinction? Why, — The Custom must be immemorial; must be uniform; must be certain; and there is no Evidence here of such a Custom. Mr. *Baxter* says, he sometimes leaves Blanks in the Warrants, and sometimes he inserts the Names of the special Bailiffs, and that he has known it so done, for seven, or eight and twenty Years. This Custom is not a Custom Immemorial, it is not proved to have been an immemorial Custom; neither is it uniform, nor proved to be certain — On the contrary, it has been proved, that the inserting the Names of special Bailiffs, in the Warrants at the Office, is more usual, than sending out Blank Warrants. And therefore, supposing, the Instances of Custom to be of any Consequence, upon the Determination of this Point, the Custom must make for the Prisoner at the Bar, because, the putting in the
Names

Names of the Bailiffs, at the Office, has been more usual. The General Law therefore is supported, the Custom, or *Lex Loci*, not being immemorial, nor uniform, but uncertain. We are now to stand on the General Law of the Land: and if the Warrant fails, neither the Bailiff, nor Mr. *Elcock*, nor any of their Assistants, acted under any legal Authority; and therefore the Killing of Mr. *Elcock*, cannot amount to more, than Manslaughter. The Authority, my Lord, which Mr. *Elcock* had, was given him by *James*; *John Evans*, the proper Bailiff, was not there, but *James* was the acting Bailiff. If *James* had a Mind, that Mr. *Elcock* should have attempted the breaking open the Door, surely, he wou'd have desired him to have done so, and not bid him, stay at the Door only. The Bailiff acts under a limited Authority, Can he then do, what he is not authorized?—*James* acted under a limited Authority, and whether he had Power to call Assistance, without an Application to the Sheriff, seems to me a great Doubt; but I humbly apprehend, that a Person, to whom a limited Power is delegated, cannot depute another, to execute any Part of that limited Power.—In Cases of Rescous, a Writ of Rescous may be had.—Upon Complaint made, that the Party is rescued, a Writ of Rescous issues.—In Criminal Cases, I allow an Officer, can call another to his Assistance: But this was a civil Case; The Prisoner was out of Sight; It was not a Criminal Matter, nor an Escape from an Execution. If *James* the Bailiff had an Authority, to break open the Prisoner's House, it has not been proved, that he gave Mr. *Elcock* this Authority, but the Reverse. *James* bid him only stay at the Door. Mr. *Elcock* himself sent for, or borrowed the Crowe, the Plaintiff *Atkin* put it under the Door, and Mr.

Elcock poised it with an Intent to take it off the Hinges. No particular Authority was given by *James*; but Mr. *Elcock* took the Management upon himself. It was his Business, only to watch the Door.—*Atkin* put the Crowe under the Door, and Mr. *Elcock* poised it, neither of them had any Order, or Directions to break open the House; and Mr. *Elcock* having exceeded the Limits of the Authority given him, became a Trespasser; and the unfortunate Killing of him, in the Commission of that Trespass, can only be Manslaughter, and not Murder.—My Lord, I apprehend, that upon an Escape, or Rescous from an Arrest, upon Mesne-Process, an outward Door cannot be broke open. This was an outward Door: The Rescous was at an End for two Hours, and there ought to have been a Request, to assist on the Rescous; and a Request to assist on a Rescous, is traversable.

Court. It must be left to the Jury, Whether there was a Request, or not.

Mr. *Maddocks*. In short, if Mr. *Elcock* was a Trespasser, the Killing of him, can be only Manslaughter. I humbly apprehend, that *John James* had no Authority, under the Warrant, for the arresting the Prisoner: His Name was not inserted in the Warrant, till after it had passed the Seal of Office. He delegated only a particular Authority, to Mr. *Elcock*.—Mr. *Elcock* exceeded that Authority. Mr. *Elcock* was a Trespasser. The Prisoner fired a Gun, which killed Mr. *Elcock*, in the Commission of the Trespass, when he was breaking open the Prisoner's Door: and therefore I hope, your Lordship will be of Opinion, that these are Points, to essentially, in Favour of the Prisoner, that you will not prevent him, from having the Benefit of the Law, which may result, from a
judicial

judicial Determination of them; nor suffer the Prisoner's Life to be left at the Hazard of a general Verdict.

Mr. J. S. Can you shew any Case to the Court, where an Arrest under a blank Warrant, has been superseded?

Mr. Maddocks. No, my Lord, I know of no Case at present.—But the Thing speaks for itself: it is not likely, there should be many Cases of this Kind.

Mr. J. S. Is the Doctrine of my Lord *Hale*, laid down in any Part of *Hawkins's* Pleas of the Crown?

Mr. Maddocks. I have not looked over Mr. *Hawkins* for it, but if it is omitted to be inserted in his Pleas of the Crown, I hope, that Omission cannot be considered to repeal, or invalidate my Lord *Hales's* Authority.

Mr. J. W. This Case does not seem to me, to come under the Doctrine of Lord *Hale*. For here a Bailiff was named, and inserted in the Warrant, before it was sealed; and I think, it was a good Warrant.

Court. Distinguishes the Warrant from a Deed; For a Deed must be delivered, and the Sealing and Delivering make a Deed.

Mr. Maddocks. The Warrant was directed to the Bailiffs, jointly, and severally, The Name of *John Evans* was then, only, in the Warrant; *John Evans* never acted in the Execution of it; and therefore the Warrant must be illegal, quoad *James*.

Mr. *Hall* of Counsel for the Crown, then spoke to the following Effect.

I should have almost thought it unnecessary for me to have troubled the Court further, on so plain

a Case, but that the Objections, made to the Authority of Mr. *Baxter*, seem to require, that something should be sayd, to prevent a Notion from prevailing, that he had not a Right, to make out the Warrant.——By the Common Law, an Under-Sheriff may be appointed by Parol, or Deed; and several Under-Sheriffs, for different Purposes.

Court. Shew your Cases.

Mr. *Hall* proceeds.

One Sheriff in *London* has two Under-Sheriffs, two Counters, two Prisons: The Business is carried on, by different Persons.---And there is a Sheriff's Office in *Furnival's-Inn*, the Business of which, is executed by a Clerk; and those Persons are appointed by Parol. Mr. *Baxter* has been appointed in the same Manner, and it has been usual, to make out blank Warrants for a great Number of Years. Prescription for thirty Years is good, unless the contrary appears; and here, nothing does appear to the contrary. Mr. *Baxter* swears, it has been the Custom all his Time, which he limits to seven or eight and twenty Years, to make out blank Warrants, for the Names of the special Bailiffs to be inserted. Mr. *Baxter* did make out this Warrant, against the Prisoner, and directed it to *John Evans* a Bailiff, and left a Blank, for the Attorney to insert two other Names; Mr. *Elock* did put in those two Names, and must be considered, as Clerk, or Agent to the Sheriff; and it so, *John James* was lawtully authorized, to arrest the Prisoner, upon that Warrant, and did actually arrest the Prisoner, who afterwards by Violence, rescued himself from the Custody of the Bailiff. The Law, upon a Rescous, gives Authority for the Purpose of taking a Defendant.——To break open Doors, and justifys all Persons, aiding and assisting the Officer, whether they

they be requested, or not.——If a Bailiff takes a Man, by the Hand, out of a Window, it is an Arrest, and he may justify the breaking open of Doors, after the Defendant, if he should attempt to escape; and I humbly apprehend, the Reason for breaking open the Door, was stronger in this Case.——Cites *Peer Williams*, The Corporation of *Bewdley* relating to Venires ——Though upon Complaint of a Rescous, a Writ of Rescous may be sued out, yet I apprehend, that does not prevent taking other Remedies, such as breaking open Doors. The Sheriff may return a Rescous upon a *Mesne-Process*, but cannot upon an Execution; He must raise a *Posse-Comitatus*; but that does not hinder him, from raising the *Posse-Comitatus*, for a Rescous, from an Arrest upon a *Mesne-Process*, if he thinks fit.——It was the Duty of every Man, to aid and assist *John James* the Bailiff, to re-take the Prisoner, after he had rescued himself, from the Hands of Justice, by the Force and Violence given in Evidence by *James*; and Mr. *Elcock* did what was right, in endeavouring to suppress the Arrogance, and Outrage of the Prisoner, and to bring him under a Subjection to those Laws, which are too authoritative to be trampled upon, and treated with Contempt and Disobedience. The Authority in Lord *Hale*, cited by the Prisoner's Counsel, is a very old Authority. My Lord *Hale*, I admit was a great Man, and I pay the highest Regard to his Reports, but I don't find this Authority named in Serjeant *Hawkins's* Pleas of the Crown, and therefore I apprehend the Serjeant doubted it.

Then Mr. *Falconer* also of Counsel for the Crown, spoke to the following Effect.

The Practice of the Officer, acting for the Under-

der-Sheriff, in granting blank Warrants, has never been complained of, as an irregular, or unlawful Practice, nor has any Arrest made upon those Sort of Warrants, been ever superseded, or set aside: Such blank Warrants have always been held good, and the acting under them legal; and it would be of most dangerous Consequence, to attempt to vitiate Proceedings, under which Justice has, for Time immemorial, been administred to the Suitors of the Court. Cites *Hales H. C.* 459.

Prisoner's Counsel.—That is upon an Execution.

Then Mr. *Hayward*, likewise of Counsel for the Crown, spoke to the following Effect.

My Lord, I humbly conceive, that the Arguments made use of by the Prisoner's Counsel, for invalidating the Practice of issuing blank Warrants, will have little Weight with your Lordship, it having been the Usage for Time immemorial, for Persons acting under the Sheriff of this County, as Mr. *Baxter* now do's, to send out such Warrants, and that Practice was never known to be controverted: And if your Lordship is satisfied, that such has been the allowed Practice, then I humbly contend, that the special Bailiff *John James* had a legal Authority to arrest the Prisoner, by virtue of the Warrant which he received from Mr. *Elcock*, and that upon his rescuing himself, as has been given in Evidence, the Officer had a Right to call Assistance, and to break open Doors for the Purpose of re-taking him.—Cites *Mac Cullogh's Case* 9. *Coke*. If a Capias instead of a Distinguas be executed by an Officer, and the Officer is killed, it is Murder; Surely then, it can be no less a Crime than Murder, to kill an Officer after he has executed a Capias. If then the Authority under which *James* acted was a good
 Autho-

Authority, Mr. *Elcock* did what was legal, tho' I heartily wish he had acted with better Caution. Cites *Palmer* 52. *White's Case*. And the Killing Mr. *Elcock*, or any of the Persons who assisted in re-taking the Prisoner, after he had rescued himself, was Murder. If a Sheriff can appoint a Deputy generally by Parol, I humbly apprehend he may appoint a Person to act in any particular Part of the Office by Parol: I see no Reason why he may not do it in one Case, as well as in the other. — As to a Warrant being the same thing in Effect as a Deed, with regard to the Execution of it, as the Counsel for the Prisoner contend, Surely there is not the least Foundation for the Comparison: A Warrant is only sealed, but signing, sealing, and delivering are necessary to make a Deed. It has been argued by the Counsel for the Prisoner, in his Defence, That *James*, the Bailiff had no Right to call Assistance for the re-taking the Prisoner, because, as they say, it was a civil Case; it was not a criminal Matter; nor an Escape from an Execution; But my Lord, I humbly insist, that from the Moment the Prisoner had refused to submit to the Arrest, and had rescued himself from the Officer, by snapping a Pistol at him, it ceas'd to be a civil Case; it became a Criminal Matter: The Prisoner was a Transgressor and Violator of the Laws of his Country; He broke his Majesty's Peace, and became a criminal Offender; And therefore the Bailiff had a Right to call, and every Person ought to give him Assistance for apprehending him: His House remained no longer an Asylum, or Sanctuary for him: He forfeited the Safety which the Law had given him in the close Retirements of his House before he was arrested: His Doors could be afterwards no Security to him from the Hands of Justice; and therefore his Killing

Mr.

Mr. *Elcock* in the Pursuit of him, for the Purpose of bringing him to a due Submission and Obedience, was (I humbly conceive) Murder, and not Manslaughter. The Life of a Man (*says my Lord Coke*) is to be favoured, but the Life of the Law more so. The Law was established for the Security, Defence, and Protection of every Individual, and is the Life, Strength, and Support of the Community. Upon the whole, I humbly apprehend, your Lordship will be of Opinion, that the Points insisted upon by the Countel for the Prisoner cannot intitle him to any Indulgence from the Court; But on the contrary, that you will think them too weak and insufficient to induce you to direct a special Verdict to be found; and that therefore your Lordship will now sum up the Evidence to the Jury, that they may consider it, and find a general Verdict.

MR. ATTORNEY produces a Case, *Harris* against *Astley*, determined by Lord *Mansfield*, the Sittings after *Michaelmas* Term 1756, in the *King's-Bench*, where a Sheriff's Clerk fill'd up the Assignment of a Bail Bond, and it was held good.

Mr. *Townsend* for the Prisoner.

I humbly contend, That the Warrant by reason of the Inserting the Bailiffs, after the Sealing of it, is not a legal Warrant, and if so, my Lord *Hale's* Doctrine is to the Point, and clearly for the Prisoner. The King's Countel themselves admit Lord *Hale's* Reports to be an Authority, and therefore hope, the Prisoner is well intitled to the Benefit of this Authority. Though the Sheriff may appoint a Deputy by Parol, and that Deputy depute his Authority to a third Person, yet, if that third Person had not a Right of deputing, Mr. *Elcock* could not act, as Agent,
or

or Clerk to the Sheriff; and I humbly insist, Mr. *Elcock* had not a Right to do so, unless the Sheriff himself gave an Authority appointing him. Mr. Serjeant *Hawkins* omitting to insert my Lord *Hale's* Case in his Pleas of the Crown, is no Reason for its not being a Resolution, of as great Authority, as any extant; and it wou'd be a Pity, as well as cruel, that the Prisoner's Life shou'd be forfeited for that Omission. It was an Omission, not probably intended; he might have over-look'd it, or it might have been left out by some other Accident: No Authority contradicts it, and therefore I contend, that it is still an Authority, in full Force and Effect, and available to the Prisoner, and not abolished or affected by the Custom, which the Counsel for the Crown have set up, in Opposition to it. Custom, my Lord, must be supported by Usage, for Time immemorial; Custom must be uniform and certain, before it becomes a Law: This Custom carries with it, none of those Qualifications. What Mr. *Baxter* has sayd, therefore, cannot over-set the Rules of the Common Law. I never knew, during all the Time of my own Clerkship, a blank Warrant sent out, without an Indemnity by Deed; and the Attornies always sent, with the Names of the special Bailiffs Indemnities, either by Deed, or Assumpsit, on the Back of the Writ: And I humbly insist, that the Inserting of the Names of the two Bailiffs in the Warrant, which *James* had to arrest the Prisoner, is directly within the Words and Sense of my Lord *Hale's* Case, as to those two Bailiffs.

Court. Persons coming to the Assistance of the Constable the Law gives the same Sanction to, as to those called by Name. — One Point occurs not yet

spoken to, Whether the Warrant may not be considered as an *Elcrow*.—Suppose, a Person gives a Bond to another, sealed and delivered with a Blank in it for the Sum, and desires him to insert Two Hundred Pounds or any Sum in it, and he to whom the Bond is given, fills up the Blank accordingly, it is good. I shou'd be glad, you cou'd produce one Instance, where a Person, who has been arrested upon a blank Warrant, has been discharged.

Mr. *J. W.* No other Person was concerned in the Transaction, but the Party giving the Warrant, and the Party executing it. No Instrument or Writing is a Deed, until it is delivered; But a Warrant is a Warrant as soon as it is sealed.

If a Court see a blank Indorsement on a Note, they will afterwards suffer it to be filled up. What a dangerous Confusion wou'd be created in the Country, were the Proceedings upon Arrests made by blank Warrants, to be now set aside? to what a precarious Situation wou'd the Property of the Subject be exposed? And how unsettled the Distribution of Justice, heretofore administered upon the Foundation of such Arrests? As to the Question, Whether the Bailiff's Authority to Mr. *Elcock* was for a particular Purpose, or general.—By the Bailiff's calling out after *Stevenson* to stay; They were coming for him.—I should think, that Mr. *Elcock* was with the Bailiff to give him general Assistance.—This is Matter of Fact, not Law.

Mr. *Townsend* again for the Prisoner:

I hope, the Points of Law that have arisen, in the Courte of this Tryal, will induce your Lordship to direct the Jury to find a special Verdict, that
the

the Prisoner may have the Benefit of the Law, and that you will not suffer a Matter, which so nearly endangers the Prisoner's Life to be determin'd by a Jury: The Authority of Lord *Hale* furnishes me with an Expectation, that you will grant this Indulgence to the Prisoner.

Mr. J. S. I must in Justice to you MR. RECORDER, and the other Counsel for the Prisoner say, that you have discharged yourselves, through the Course of this Tryal, with great Decency, and Judgment, and have done every thing for the unhappy Man, that cou'd possibly be expected from Gentlemen at the Bar. As for my own Part, I have the greatest Inclination to Mercy, and no Person would more readily extend Compassion to a proper Object, than I wou'd: But, I cou'd wish, that it had not been my Province, to hear, and be a Judge of so shocking and melancholy an Event; For this being an Inquisition for Blood, To delay the Execution of Justice, may tend to over-let and destroy Justice. However, if you Gentlemen at the Bar, or Counsel for the Prisoner, will give this Court your Honour, that you verily believe, the Points of Law, which seem to have arisen upon this Tryal, will in the End, avail the Prisoner, and that you think, Judgment of Murder may be averted from him, upon the Decision of those Points; and that you do not ask Indulgence for the Sake of Delay, but from reasonable Hopes that the Prisoner may be acquitted of Murder, when the Facts come to be argued, I will most readily consent, to direct the Jury to find a Special Verdict; But if on the other Hand, you think, that the Prisoner may not be availed by the Determination

of the Court upon those Points, I rely upon your Honour, and hope you will not request it.

Mr. Townsend.

With great Submission to the Court, We humbly apprehend, that the Prisoner will receive the utmost Advantage upon the Determination of the Facts to be stated: We have the Authority of Lord *Hale* on our Side, and shall have Time to consult other Authorities, which may probably give us further Assurances, that the Prisoner's Life, in the End will be saved by the Decision of those Points. But if we should fail, I have no Doubt upon me, but the Conduct of myself, and of the other Counsel for the Prisoner, will be clear from every Imputation, inasmuch as We request this Indulgence under the Patronage of my Lord *Hale*, and not to delay or protract Justice, but that the Prisoner may receive that Benefit from the Law, which We humbly conceive, he is intitled unto; and for these Reasons only, We desire, that the Court will give the Prisoner an Opportunity of having those Points argued.

The Court consented.

Then the Facts were stated, and found by the Jury as follows.

The Jurors find the Capias with the Indorsement of Indemnity.

That the said *John Atkin*, Plaintiff in the said Capias, signed the Indorsement of Indemnity.

That the Sheriffs of the County of *Chester* have always appointed a Person, residing in the City of *Chester*

Chester, to receive Writs, make Warrants thereon, and to return them.

That Mr. *Robert Baxter*, the Night before *Samuel Harrison* Esquire, Sheriff of the said County of *Chester*, was sworn into Office, but after he had received his Appointment as Sheriff, was in Company with the said *Samuel Harrison*, then, and now Sheriff of the said County, and *John Hollins* Gentleman, Under-Sheriff of the said County; and the said *Robert Baxter* was then appointed for the Purposes aforesaid; under which Appointment the said *Robert Baxter* has acted ever since. That the said Sheriff was sworn into Office the Day following such Appointment; That the said *Robert Baxter* after that Time, and in Pursuance of such Appointment, did make out a Warrant upon the said *Capias*, under Seal of the said Sheriff, in the Words following, that is to say, [Here the Warrant is to be set forth in the Record of the Special Verdict.] But

Note.—In setting forth the Warrant in the Special Verdict, the Words, “*John James and John Jones*” are to be omitted.

That the said *Robert Baxter* delivered the said Warrant, so under Seal as aforesaid, to Mr. *Lowe*, then Agent to *Francis Elcock* since deceas'd, which said *Francis Elcock* was Attorney for the Plaintiff *John Atkin*.

That the same Warrant so sealed, was sent to the said *Francis Elcock* to *Nantwich* in the said County, (a Blank being left in the said Warrant.)

That it has been the Practice in the Sheriff's Office of the said County of *Chester*, to grant Warrants with the Names of the Sheriff's Bailiffs inserted, and that Blanks have been left therein, for the Purpose of inserting the Names of special Bailiffs,

to be added to such Sheriff's own Bailiffs, to act jointly or severally; and that it has also been the Practice for the Sheriff's Agent, to insert the Names of all the special Bailiffs therein, before the same hath been delivered out to the Bailiffs, when such Names have been sent to the Sheriff's Office; and that the said *Francis Elcock* afterwards, at *Nantwich* aforesaid, by the Permission of the said *Robert Baxter*, inserted in the said Warrant, in the Blank left for that Purpose, the Words and Names following, to wit, "*John James and John Jones.*" That the said Warrant was delivered to *John James*, by Virtue whereof he the said *John James* alone arrested the said *John Stevenson*. That the said *John Stevenson*, after he was so arrested, rescued himself, went into his House, and shut the Doors. That the said *John James* applied to the said *Francis Elcock*, for Arms and Assistance, to re-take the said *John Stevenson*, (the said *Francis Elcock* then being at an House in the Neighbourhood.) That the said *John James*, the said *Francis Elcock*, and several other Persons, as Assistants to the said *John James*, made fresh Pursuit, and went to the House of the said *John Stevenson*, as soon as they cou'd, in order to re-take him the said *John Stevenson*, but that *John Evans*, named in the said Warrant, never was there, and that all the Doors of the said House were shut. That the said *John James*, upon his going to re-take the said *John Stevenson*, and before he the said *John James* got to the said *John Stevenson's* House, saw the said *John Stevenson* out of Doors, but going towards the said House, and before he the said *John Stevenson* got into the said House, He the said *John James* called out to the said *John Stevenson* in these Words. " You may as well stay,
" for

“ for we are coming for you.” That when the said *John James*, the said *Francis Elcock*, and others, as Assistants to the said *John James*, came up to the said House, the said *John James* told the said *Francis Elcock*, to take care of two of the Doors of the said House, and the said *John James* went to a Door on the other Side of the same House, out of the Sight of the said *Francis Elcock*. That the said *Francis Elcock* demanded Entrance, while the said *John James* was at another Door, out of Sight of him the said *Francis Elcock*. That the said *John Atkin* the said Plaintiff, was at the same Door, with the said *Francis Elcock*, with an Iron Crowe in his Hand. That the said Crowe was brought there, together with other Arms, by the Direction of the said *John James*. That the said *Francis Elcock* bid the said *John Atkin*, to put the said Iron-Crowe, under the same Door, to break it open; Whereupon the said *John Atkin* put the said Crowe, under the same Door, for that Purpose, and endeavoured to lift the same Door off the Hinges, but failing, He the said *John Atkin* then left the said Crowe sticking under the same Door, and went towards another Door of the same House, to prevent the said *John Stevenson* elcaping, and left the said *Francis Elcock* at the same Door, where the said Iron-Crowe was. That there were two Holes in the same Door, through which the said *John Stevenson* might see, who was on the Out-side of the same Door. That the said *John Stevenson* took a Gun from the Mantle-Piece in his said House, loaded with Gun powder and a Bullet, and shot and ditcharged it, and shot the said *Francis Elcock*, through the same Door, in the Part mentioned in the Indictment, of which he the said

Francis

Francis Elcock died, as in the said Indictment is mentioned.

And if upon the whole Matter, the Court shall be of Opinion, that the said *John Stevenson* is Guilty of Murder, the Jury say, that the said *John Stevenson* is Guilty of Murder.

And if the Court shall be of Opinion, that the said *John Stevenson* is Guilty of Manslaughter, the Jury say, that the said *John Stevenson* is Guilty of Manslaughter, and not Guilty of Murder.

F I N I S.



E R R A T A.

Page 3. Line 22. *For Rear read Year.*

W. Wood

W. Wood

